

Article - Courts and Judicial Proceedings

§3-2A-05.

(a) (1) Except as provided under paragraph (2) of this subsection, all issues of law shall be referred by the Director to the panel chairman. All issues of fact shall be referred by the Director to the arbitration panel.

(2) Where a panel chairman has not been appointed or is temporarily unable to serve, and the Director is admitted to the Maryland Bar, the Director may rule on all issues of law arising prior to hearing that are not dispositive of the case and shall include the assessment of costs.

(b) (1) The provisions of §§ 3-212 through 3-217 of this title are applicable to proceedings under this subtitle.

(2) Except for the provisions of the Maryland Rules relating to time for the completion of discovery, the provisions of the Maryland Rules relating to discovery are applicable to proceedings under this subtitle. All discovery in any action under this subtitle shall be completed within 270 days from the date on which all defendants have been served, unless extended by the panel chairman for good cause shown.

(3) Properly authenticated hospital records and the records of treating health care providers are admissible without the necessity of calling the physician, subject to reasonable notice and the right of the opposing party to depose.

(c) The attorney member of the panel shall be chairman and he shall decide all prehearing procedures including issues relating to discovery and motions in limine. The chairman shall rule in camera on any motion in limine.

(d) A party may not present testimony from more than 2 experts in a designated specialty before an arbitration panel unless the panel chairman, for good cause shown, permits additional experts.

(e) (1) The arbitration panel shall first determine the issue of liability with respect to a claim referred to it.

(2) If the arbitration panel determines that the health care provider is not liable to the claimant or claimants the award shall be in favor of the health care provider.

(3) If the arbitration panel determines that a health care provider is liable to the claimant or claimants, it shall then consider, itemize, assess, and apportion appropriate damages against one or more of the health care providers that it has found to be liable.

(4) The award shall itemize by category and amount any damages assessed for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for any future expenses, costs, and losses shall be itemized

separately.

(f) (1) The award shall include an assessment of costs, including the arbitrators' fees.

(2) If there is no panel determination, the panel chairman shall assess costs.

(3) The party who pays the costs shall receive a credit for the filing fee the party pays under § 3-2A-03A(b) of this subtitle.

(g) (1) The arbitration panel shall make its award and deliver it to the Director in writing within 1 year from the date on which all defendants have been served and within 10 days after the close of the hearing.

(2) The Director shall cause a copy of it to be served on each party within 15 days of having received it from the arbitration panel.

(h) (1) A party may apply to the arbitration panel to modify or correct an award as to liability, damages, or costs in accordance with § 3-222 of this title.

(2) (i) The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified under statute, insurance, or contract for all or part of the damages assessed.

(ii) The panel chairman shall receive such evidence in support and opposition to a request for reduction, including evidence of the cost to obtain such payment, reimbursement, or indemnity.

(iii) After hearing the evidence in support and opposition to the request, the panel chairman may modify the award if satisfied that modification is supported by the evidence.

(iv) The award may not be modified as to any sums paid or payable to a claimant under any workers' compensation act, criminal injuries compensation act, employee benefit plan established under a collective bargaining agreement between an employer and an employee or a group of employers and a group of employees that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, program of the Department of Health and Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1 of the Health - General Article, or as a benefit under any contract or policy of life insurance or Social Security Act of the United States.

(v) An award may not be modified as to any damages assessed for any future expenses, costs, and losses unless:

1. The panel chairman orders the defendant or the defendant's insurer to provide adequate security; or

2. The insurer is authorized to do business in this State and maintains reserves in compliance with rules of the Insurance Commissioner to assure the payment of all such future damages up to the amount by which the award has been modified as to such future damages in the event of termination.

(vi) Except as expressly provided by federal law, no person may recover from the claimant or assert a claim of subrogation against a defendant for any sum included in the modification of an award.

(i) Subject to § 3-2A-06 of this subtitle, the award of the panel shall be final and binding on the parties. After the time for either rejecting or modifying the award has expired the Director may, or, when requested by any party, shall file a copy of the award with the circuit court having proper venue, as provided in Title 6, Subtitle 2 of this article and the court shall confirm the award. Upon confirmation the award shall constitute a final judgment.

(j) Except for time limitations pertaining to the filing of a claim or response, the Director or the panel chairman, for good cause shown, may lengthen or shorten the time limitations prescribed in subsections (b) and (g) of this section and § 3-2A-04 of this subtitle.